Office-Supreme Court, U.S.
FILED
MAR 3 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1066

IN THE
# Supreme Court of the United States

OCTOBER TERM, 1982

---

UNITED STATES OF AMERICA,
*Appellant*,
v.
HARRY PTASYNSKI, *et al.*,
*Appellees*.

---

On Appeal from the United States District Court for the District of Wyoming

---

## BRIEF *AMICUS CURIAE* OF ATLANTIC RICHFIELD COMPANY

---

MATTHEW J. ZINN
(Counsel of Record)
ROBERT E. JORDAN III
TIMOTHY M. WALSH
STEPTOE & JOHNSON
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 862-2028
*Attorneys for Amicus Curiae*
*Atlantic Richfield Company*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

---

No. 82-1066

---

UNITED STATES OF AMERICA,
*Appellant*,

v.

HARRY PTASYNSKI, *et al.*,
*Appellees*.

---

**On Appeal from the United States District Court for the District of Wyoming**

---

## BRIEF *AMICUS CURIAE* OF ATLANTIC RICHFIELD COMPANY

---

This brief in support of appellant is submitted with the written consent of counsel to all parties filed with the Clerk of the Court.

### INTEREST OF THE *AMICUS CURIAE*

Atlantic Richfield Company and its subsidiaries ("Atlantic Richfield") have been extensively involved in exploration, production and transportation activities relating to oil located in the State of Alaska and on the Outer Continental Shelf adjacent to it. Atlantic Richfield took part in the discovery of the Prudhoe Bay field on the Alaskan North Slope, and is the operator for one half of Prudhoe Bay's Sadlerochit reservoir. It participated in the construction of the Trans Alaska Pipeline System, in which it owns a major interest.

Atlantic Richfield also is the operator of and primary producer from the Kuparuk River field on the Alaskan North Slope. Its share of total production over the life of that field is approximately 57 percent. Kuparuk River is the major reservoir now in commercial production that meets the criteria for the "Alaskan oil" exemption at issue in this case. Atlantic Richfield constructed a twenty-seven mile pipeline to connect the Kuparuk River field to the Trans Alaska Pipeline System and began production of Kuparuk oil in December 1981. It has invested almost $700 million in development of the Kuparuk River field, including transportation facilities, since enactment of the Windfall Profit Tax, and its current plans call for an ultimate investment of approximately $4 billion. Atlantic Richfield has increased the scope of its Kuparuk investments and accelerated their timing in reliance on the "Alaskan oil" exemption.

In addition to its current production of "exempt Alaskan oil," Atlantic Richfield holds a number of leases on potential oil producing tracts located within the areas covered by the exemption. It is now evaluating development of the Lisburne reservoir at Prudhoe Bay, additional reserves in the Kuparuk River field, and new reserves discovered in the Duck Island/Sag Delta area of the Beaufort Sea, off the Alaskan North Slope. Atlantic Richfield also owns significant leasehold interests elsewhere in the Beaufort Sea, as well as on the arctic coastal plain east of Prudhoe Bay and in the Tanana Basin, which is located below the Arctic Circle west of Fairbanks. It acquired these interests after enactment of the Windfall Profit Tax, at a total cost of approximately $36 million, and has conducted extensive exploration activities on them.

Given its substantial interests in areas covered by the "Alaskan oil" exemption, Atlantic Richfield faces the threat of increased windfall profit taxes—as well as reduced incentives to develop its affected holdings—if the exemption is declared invalid.

This brief *amicus curiae* is submitted solely in support of the position that the "Alaskan oil" exemption does not violate the Uniformity Clause. Atlantic Richfield does not support appellant's contention that the exemption is severable from the remaining provisions of the Windfall Profit Tax. Nor does Atlantic Richfield agree with the United States regarding other constitutional challenges to the tax that were presented below but are not before the Court in this appeal.

## SUMMARY OF ARGUMENT

Congress adopted the Crude Oil Windfall Profit Tax, Pub. L. No. 96-223, §§ 101-103, 94 Stat. 229-56 (1980), to deal with the anticipated effects of removing federal price controls on domestic crude oil. As enacted, the tax does not apply to a limited category of "exempt Alaskan oil," which is defined as oil—other than that from the Sadlerochit reservoir at Prudhoe Bay—(1) produced north of the Arctic Circle or (2) produced north of the divide of the Alaska-Aleutian Range and at least 75 miles from the Trans Alaska Pipeline System. I.R.C. §§ 4991(b)(3), 4994(e). It is important to recognize that the term "Alaskan oil" does not accurately reflect the actual reach or limitations of the exemption. On the one hand, the exemption extends to oil located outside the State of Alaska, on portions of the Outer Continental Shelf. On the other, the exemption does not apply to all oil produced in Alaska. Substantial areas of the state are simply outside the geographic scope of the exemption. In addition, "Sadlerochit oil" is expressly excluded from the exemption, an exclusion that in and of itself leaves the largest crude oil reservoir in the entire United States subject to the Windfall Profit Tax.

The "Alaskan oil" exemption does not violate the Uniformity Clause of article I, section 8 of the Constitution either because it applies to a portion of the oil located in one state or because it was drafted in geographic terms.

The Uniformity Clause reflects a general principle of federal-state relations, and was designed to prohibit only those taxes that have no basis other than preference for or discrimination against particular states. *Knowlton v. Moore*, 178 U.S. 41, 89 (1900). Congress has broad power to select appropriate objects of taxation, wherever they happen to be located. *See, e.g., Fernandez v. Wiener*, 326 U.S. 340, 352 (1945). It may create tax categories whose reach is geographically limited so long as there is a justification beyond mere favoritism among states. *Head Money Cases*, 112 U.S. 580, 594-95 (1884).

Congress enacted the Windfall Profit Tax to reach increases in crude oil prices made possible by decontrol while at the same time encouraging the discovery and development of new domestic oil reserves. It identified a number of categories of oil as to which costs, production difficulties or the prospects for new oil supplies made production incentives particularly necessary. Special tax treatment was provided for each of these categories, in the form of favorable base prices, reduced tax rates, or exemptions.

The "Alaskan oil" exemption was adopted as part of this overall classification scheme. Congress, for two principal reasons, concluded that special tax incentives were necessary to encourage the production of additional oil in the areas covered by the exemption. First, Congress understood that the price for which such oil could be marketed was substantially reduced by the costs of transporting it to refineries. Those costs, attributable to the combination of Trans Alaska Pipeline System tariff rates and marine transportation charges, are without parallel elsewhere in the United States. Second, Congress recognized that exploration and production in the region covered by the exemption involve higher risks and costs than are normally encountered elsewhere. Extreme weather

conditions, short construction seasons, the problems of working in permafrost areas, and the absence of support facilities combine to make operations in arctic and subarctic Alaska uniquely expensive and uniquely difficult.

Moreover, Congress was aware that the areas covered by the exemption offer significant prospects for the discovery of major new domestic oil reserves. It consequently determined that the national interest requires particularly strong incentives for exploration and production activities in those areas.

The "Alaskan oil" exemption was narrowly drawn in response to these considerations. It does not include oil from the Sadlerochit reservoir—by far Alaska's largest—or the Cook Inlet fields; as to each of these, Congress reasoned that cost or incentive factors did not justify an exemption. As a consequence of those exclusions, most of the oil currently produced in Alaska is subject to the Windfall Profit Tax. It is thus neither fair nor reasonable to say that Congress created the "Alaskan oil" exemption out of favoritism to that state.

Given that the "Alaskan oil" exemption constitutes a proper tax classification, it does not violate the Uniformity Clause merely because Congress chose to state it in geographic terms. The Constitution does not require Congress to avoid the use of geographic descriptions where they provide a clear and convenient means of identifying tax categories that are not substantively based on preference or discrimination among states. Congress created a category of "exempt Alaskan oil" in order to deal with a distinct situation that required distinctive treatment pursuant to the overall scheme of the Windfall Profit Tax. The Uniformity Clause should not be held to prevent Congress from taking such action based on its judgment as to the interests of the Nation as a whole.

## ARGUMENT

### I. THE UNIFORMITY CLAUSE DOES NOT PROHIBIT ALL TAX CLASSIFICATIONS APPLICABLE TO LIMITED GEOGRAPHIC AREAS

The court below construed the Uniformity Clause as imposing a strict prohibition on the use of geographic classifications for excise taxes. In its view, "[d]istinctions based on geography are simply not allowed." 550 F.Supp. 549, 553. Because the "Alaskan oil" exemption is defined in geographic terms, the court did not examine its purpose, effect or substantive relationship to other provisions of the Windfall Profit Tax.

The Constitution does not command a per se rule against geographic tax classifications. Neither the purposes for which the Uniformity Clause was adopted nor the cases interpreting it support an approach that focuses on geographic scope or terminology alone. The Constitution requires only that the exemption be a legitimate tax classification justified by objectives other than favoritism to one or more states. This is so regardless of the area the exemption affects or the terms by which Congress chooses to define it.

The Uniformity Clause reflects a general principle of federal-state relations. The Framers intended it only to prevent "possible discrimination against one or more states" in the federal government's exercise of its taxing power. *Knowlton v. Moore*, 178 U.S. at 89. It is doubtful whether the clause was intended to forbid any tax distinctions other than those that single out entire states, not merely portions of them, for special treatment.[1] It

---

[1] As this Court has observed, the Uniformity Clause was "one in purpose, one in . . . adoption" with the Port Preference Clause (U.S. Const. art. I, § 9, cl. 6). *Knowlton v. Moore*, 178 U.S. at 105; *see also* Motion of Taxpayer and Association Appellees to Affirm at

is clear, however, that the Uniformity Clause does not limit the power of Congress to identify distinct subjects of taxation, wherever they happen to be located.

This Court has consistently rejected efforts to employ the Uniformity Clause as a limitation on the ability of Congress to address specific problems through exercise of the taxing power. Cases dealing with the clause have confirmed, not restricted, Congress' "wide latitude in the selection of objects of taxation." *Fernandez v. Wiener*, 326 U.S. at 352 (citations omitted). Indeed, until the decision below, no federal tax ever had been held to violate the requirements of the Uniformity Clause.

Prior cases interpreting the clause have dealt with claims that excise taxes must be uniform in their effects. This Court has repeatedly held that the uniformity required is not intrinsic, but merely "territorial" or "geographic." *E.g.*, *id.* at 359 (estate tax); *Bromley v. McCaughn*, 280 U.S. 124, 138 (1929) (gift tax); *La Belle Iron Works v. United States*, 256 U.S. 377, 392 (1921) (excess profits tax). In drawing this distinction, however, the Court has never found that "geographic" uniformity requires an absolute prohibition against selecting objects of taxation that are located in limited areas or against defining them in geographic terms.

---

13-14 ("the two provisions were aimed at exactly the same evil"). The Port Preference Clause has specifically been held to forbid "not discrimination between individual ports within the same or different States, but discrimination between States." *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 435 (1855); *see also Louisiana Pub. Serv. Comm'n v. Texas & N.O. R.R.*, 284 U.S. 125, 131 (1931); *Pacific Ref. Co. v. Department of Energy*, 455 F. Supp. 1091, 1093-95 (D. Del. 1978). The constitutional origins of the Uniformity Clause thus suggest that it was intended only to prohibit Congress from making taxes applicable in one entire state but not in another. *See also* 1 J. Story, *Commentaries on the Constitution of the United States* § 957, at 673 (3d ed. 1858).

To the contrary, the touchstone of uniformity has been that a tax "operates with the same force and effect in every place where the subject of it is found." *Head Money Cases*, 112 U.S. at 594. This test looks in the first instance to the "subject" of taxation selected by Congress. So long as that selection is supported by considerations distinct from favoritism among states, the Uniformity Clause is not violated merely because the subject of a tax exists in some states but not in others. *E.g.*, *id.*; *Knowlton v. Moore*, 178 U.S. at 108. The same rule necessarily applies where Congress limits its definition of a taxable object by modifying or eliminating the tax in certain contexts. *E.g.*, *Florida v. Mellon*, 273 U.S. 12, 15-17 (1927).[2]

It makes no difference that the distribution of the taxable object among the states is the result of geography alone. The tax upheld by this Court in the *Head Money Cases* presented exactly that situation. There, as part of "[a]n act to regulate immigration," Congress placed a duty on immigrants entering by ship through "any port within the United States." 112 U.S. at 589-90. Although immigrants also entered over land borders, the duty applied only to immigration by way of ports, which necessarily were located only in certain states.

The *Head Money Cases* did not deny the geographic distinction inherent in the tax, but held that Congress must be permitted to define appropriate subjects of taxation even if it knows they are limited to certain areas. As the Court squarely held, the Uniformity Clause requires only that the tax apply equally within the category Congress has selected as "the evil to be remedied." *Id.* at 594-95. If there are geographic areas in which the "evil" identified by Congress does not exist, their

[2] In *Mellon*, the Court held that a federal inheritance tax providing a credit for state inheritance taxes did not violate the Uniformity Clause, even though some states did not impose inheritance taxes and could not do so under their state constitutions.

exclusion from the tax does not violate the constitutional requirement of uniformity. *Id.*[3]

The same rule must apply even where the classification is explicitly geographic. As the Court has recognized in an analogous setting, a constitutional requirement of uniformity "does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 159 (1974).[4] The Court there upheld a bankruptcy law that applied "only in a single statutorily defined region," *id.* at 158, on the ground that the "crisis that produced the . . . Act centered . . . in the region defined by the Act," *id.* at 159.

In short, Congress may address geographically limited problems by means of statutory provisions that apply in

---

[3] Thus, in the *Head Money Cases*, the Court deferred to the judgment of Congress that "the evil to be remedied by this legislation has no existence on our inland borders, and immigration in that quarter needed no such regulation." 112 U.S. at 595.

[4] Article I, section 8, clause 4 of the Constitution empowers Congress to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." This requirement is analogous to the mandate that excise taxes be uniform throughout the United States. *Regional Rail Reorganization Act Cases*, 419 U.S. at 160-61 (discussing the *Head Money Cases*). There is substantial evidence, however, that the Bankruptcy Clause restriction was intended to impose a more pervasive limitation on Congress than the Uniformity Clause. The federal government was given power over bankruptcies in order to "eradicate the opportunities for fraud and forum-shopping engendered by varying state insolvency . . . laws." *In re Penn Cent. Transp. Co.*, 384 F. Supp. 895, 915 (Regional Rail Reorg. Ct. 1974). *See also Railway Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 471-72 (1982). By contrast, the Uniformity Clause was intended not to "eradicate" variations in excise taxes throughout the Nation but rather to prevent political discrimination among states in the exercise of concurrent federal taxing powers. *See, e.g., Knowlton v. Moore*, 178 U.S. at 89; *see also supra* note 1.

specific geographic areas. "[T]he uniformity clause was not intended 'to hobble Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain regions.'" *Id.* (quoting *In re Penn Central Transportation Co.*, 384 F. Supp. at 915).[5]

Deference to the "wide latitude" Congress enjoys in drawing tax classifications does not deprive the Uniformity Clause of all effect. The classification adopted must be supported by more than a desire to prefer or discriminate against particular states.[6] A classification that covers "neither a defined class . . . nor a particular type of problem" may very well lack the requisite support. *See Railway Labor Executives' Association v. Gibbons*, 455 U.S. at 470-71.[7]

---

[5] *Cf. Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 471 (1977) (Bill of Attainder Clause does not limit Congress "to the choice of legislating for the universe . . . or not legislating at all"). The Constitutional prohibition on bills of attainder, U.S. Const. art. I, § 9, cl. 3, is analogous to the uniformity requirements for excise taxes and bankruptcy laws in that it requires Congress to act "at a proper level of generality." *See* 433 U.S. at 469-72. *See generally* L. Tribe, *American Constitutional Law* §§ 10-4, 10-5, at 484-99 (1978). As the *Nixon* case squarely holds, the "proper level of generality" depends on Congress' specific goals, which may permissibly result in classifications of narrow scope, including "a legitimate class of one." 433 U.S. at 472.

[6] It is important to recognize that this standard is distinct from the "rational basis" test employed in equal protection analysis. *See, e.g., Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Congress conceivably might have a rational basis for imposing a tax selectively among the states. For example, it might conclude that general economic conditions in Michigan warrant exempting that state's inhabitants from a federal excise tax applicable in more prosperous states. While such a justification might be adequate for equal protection purposes, it would not necessarily satisfy the Uniformity Clause.

[7] *Gibbons* held that certain provisions of the Rock Island Transition and Employee Assistance Act lacked the uniformity required by the Bankruptcy Clause. The Court's holding was premised on its finding that those provisions, which applied "only to one regional

However, where Congress has identified the "evil" it intends to remedy and has selected a classification consistent with that goal, "simple reference to the breadth of the Act's focus cannot be determinative." *Nixon v. Administrator of General Services*, 433 U.S. at 470 n.31. Instead, the classification must be "viewed in context," so that "the focus of the enactment can be fairly and rationally understood." *Id.* at 472. The court below erred by considering only the geographic scope and terminology of the "Alaskan oil" exemption and thus failing to recognize that it is consistent with, supported by, and integral to the purposes for which Congress enacted the Windfall Profit Tax.

## II. THE "ALASKAN OIL" EXEMPTION IS CONSISTENT WITH THE POLICIES UNDERLYING THE WINDFALL PROFIT TAX AS A WHOLE

The Windfall Profit Tax is not, as the court below asserted, simply a tax on "the production and removal of domestic crude oil." 550 F.Supp. at 553. It is an excise tax on a distinct and more limited object of taxation that Congress identified by reference to several related policy objectives.[8]

---

debtor" rather than to "a defined class," in effect constituted a "private bankruptcy law" of exactly the sort the uniformity requirement was intended to prohibit. 455 U.S. at 472-73. However, the Court expressly reaffirmed its holding in the *Regional Rail Reorganization Act Cases* that bankruptcy laws may "apply to a particular industry in a particular region." *Id.* at 473.

[8] As the statute itself declares, the Windfall Profit Tax is an excise tax. I.R.C. § 4986(a). It is imposed on the opportunity to receive price increases made possible by decontrol, rather than on the ownership of oil-producing property or the realization of income from oil sales. *See* 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980) (remarks of Sen. Long). The Windfall Profit Tax lacks the essential generic characteristics of an income tax—such as a requirement of realization or an annual or other accounting period for purposes of measurement—or any other form of direct tax. *See, e.g., Brown v. Helvering*, 291 U.S. 193 (1934); *MacLaughlin v. Alliance Ins. Co.*, 286 U.S. 244 (1932); *Burnet v. Sanford & Brooks*

Congress enacted the Windfall Profit Tax in response to the anticipated effects of removing federal price controls for domestically produced crude oil. Congress recognized that decontrol would permit domestic oil prices to rise to levels principally determined by the actions of the OPEC cartel. H.R. Rep. No. 304, 96th Cong., 1st Sess. 6-7 (1979), *reprinted in* 1980 U.S. Code Cong. & Ad. News 589; S. Rep. No. 394, 96th Cong., 1st Sess. 7 (1979), *reprinted in* 1980 U.S. Code Cong. & Ad. News 410. As a general matter, Congress concluded that those price increases were "an appropriate object of taxation." *E.g.*, *id.* at 6.

At the same time, however, Congress sought to encourage the discovery and development of additional domestic oil reserves in order to reduce the Nation's dependence on foreign supplies. *E.g.*, *id.* at 7. It recognized that the production of additional oil from certain sources would involve higher costs than might be anticipated generally. *E.g.*, *id.* at 27; 125 Cong. Rec. S18,841-42 (daily ed. Dec. 17, 1979). More important, Congress determined that special incentives would be necessary to encourage the development of certain vital categories of oil reserves. The legislation consequently was designed "to impose relatively high tax rates where production cannot be expected to respond very much to further increases in price and relatively low tax rates on oil whose production is likely to be responsive to price." H.R. Rep. No. 304, *supra*, at 7; *see also* S. Rep. No. 394, *supra*, at 2, 6-7, 9.[9]

---

*Co.*, 282 U.S. 359 (1931); *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 414-18 (1913); *Flint v. Stone Tracy Co.*, 220 U.S. 107, 150-52 (1911).

[9] While Congress' discussion was in the context of oil "production," it clearly had in mind the full range of activities that are necessary in order for oil to be produced. Those activities include exploration and field development (*e.g.*, drilling production wells and constructing gathering systems and other associated facilities) as well as actual production operations.

An integral feature of the Windfall Profit Tax thus is that it provides incentives for the production of additional domestic oil by means of "special tax treatment" for "categories of oil where the production response is likely to be the greatest, the windfall increases smaller, or production costs greater." *Id.* at 27. The classifications it draws reflect the judgment of Congress as to the balance of these factors with respect to various types of oil production. The treatment provided for "exempt Alaskan oil" was the product of that balancing process, consistent with the basic purposes of the tax as a whole.

The Windfall Profit Tax takes the special considerations applicable to different categories of oil production into account in several ways. The tax begins by isolating the "windfall profit" in terms of the price increase attributable to decontrol. That increment is measured by the difference between the decontrolled "removal price" and an "adjusted base price" for which the oil could have been sold prior to decontrol. I.R.C. § 4988(a).[10]

Even at this stage, Congress drew distinctions among certain categories of oil production. Domestically produced oil is divided into three "tiers," each having a different adjusted base price. Most oil is classified as "tier 1." *Id.* § 4991(c). Limited categories of production are placed in other tiers. "Tier 2" includes production from "stripper well propert[ies]" and from Naval Petroleum Reserves. *Id.* § 4991(d).[11] "Tier 3" covers production of

---

[10] A further reduction is allowed for increased state severance taxes resulting from decontrol. *Id.* Section 4988(c) governs determination of the "removal price," the statutory term for the price actually or constructively received by the producer. The "adjusted base price," determined pursuant to § 4989, is intended to represent a pre-decontrol base price adjusted quarterly for inflation.

[11] As originally enacted, § 4991(d)(1)(B) referred to "National Petroleum Reserve[s]." Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 101, 94 Stat. 229, 236. The term "Naval Petroleum Reserve" was substituted pursuant to the Technical Cor-

"newly discovered oil," "heavy oil," and "incremental tertiary oil." *Id.* § 4991(e) Higher adjusted base prices are provided for tiers 2 and 3, thereby reducing the price increment subject to the tax.[12]

Congress drew additional distinctions in setting the rates at which the "windfall profit" is taxed. First, different tax rates are applicable to each tier, with more favorable treatment given to the limited production categories assigned to tiers 2 and 3.[13] Second, reduced tax rates are provided for oil in tier 1 or tier 2 that also qualifies as "independent producer oil." [14]

Finally, Congress made certain categories of oil production exempt from the Windfall Profit Tax. *Id.* § 4991(b). Those exemptions are determined either by the identity of the producer [15] or the nature of the production.[16]

---

rections Act of 1982. Pub. L. No. 94-448, § 201(c), 96 Stat. 2365, 2392 (1983).

[12] The base price for tier 1 oil is the May 1979 federal ceiling price for "upper tier oil" minus 21 cents. I.R.C. § 4989(c). The base prices for tier 2 oil and tier 3 oil are derived from the prices at which that oil would have sold in December 1979 under certain specified assumptions. *Id.* § 4989(d).

[13] The standard rates are 70 percent for tier 1 oil, 60 percent for tier 2 oil and 30 percent for tier 3 oil. I.R.C. § 4987(b).

[14] The independent producer oil rates are 50 percent for tier 1 oil and 30 percent for tier 2 oil. I.R.C. § 4987(b)(2). "Independent producer oil" is defined by § 4992, and generally involves production of no more than 1,000 barrels per day by producers that are not also engaged in refining or retailing operations.

[15] "[Q]ualified governmental interest," I.R.C. §§ 4991(b)(1), 4994(a); "qualified charitable interest," §§ 4991(b)(1), 4994(b); "exempt Indian oil," §§ 4991(b)(2), 4994(d). These exemptions were provided "to avoid imposing a tax burden on income devoted to public purposes." S. Rep. No. 394, *supra* p. 12, at 2.

[16] "[E]xempt Alaskan oil," §§ 4991(b)(3), 4994(e); "exempt front-end oil," §§ 4991(b)(4), 4994(c).

These categories within the Windfall Profit Tax demonstrate that Congress carefully determined the extent to which special production incentives would be necessary in specific contexts. For example, "newly discovered oil" was placed in tier 3, subject to a 30 percent tax on the lowest level of "windfall profit" under the statutory computation.[17] This favorable treatment was based on the need to encourage the discovery of new domestic oil reserves and on a recognition that future exploration and production activities will generally involve higher costs than existing production. *See, e.g.*, 125 Cong. Rec. S17,269 (daily ed. Nov. 27, 1979) (remarks of Sen. Schmitt); 125 Cong. Rec. S17,496 (daily ed. Nov. 29, 1979) (remarks of Sen. McClure). Similarly, "heavy oil" was given tier 3 treatment in light of the special technology and high production costs required for the extraction of "more tar-like" low gravity crude oil. S. Rep. No. 394, *supra* p. 12, at 51; *see also* 126 Cong. Rec. H1841 (daily ed. Mar. 13, 1980) (remarks of Rep. Thomas).[18] By comparison, "stripper well" production, which involves the continued operation of wells that yield small volumes of oil, was placed in tier 2.[19] While stripper well operations

---

[17] Congress subsequently determined that an even lower tax rate should apply. The Economic Recovery Tax Act of 1981 provided that the rate for "newly discovered oil" would be reduced from 30 percent to 15 percent over the years 1982-1986. Pub. L. No. 97-34, § 602, 95 Stat. 172, 337-38 (codified at I.R.C. § 4987(b)(3)(B)).

[18] The "heavy oil" category illustrates that classifying various types of production according to cost necessarily involved distinctions having geographically limited effects. As Congress recognized, "[m]ost of this oil is located in California." S. Rep. No. 394, *supra* p. 12, at 51. However, there has been no suggestion that the purpose of placing heavy oil in tier 3 was to favor the State of California, in violation of the Uniformity Clause, rather than to recognize the special costs of heavy oil production.

[19] A "stripper well" is one from which the average daily production does not exceed 10 barrels. *See* S. Rep. No. 394, *supra* p. 12, at 37.

do not normally require exploration efforts, new facilities or high-cost technology, this treatment recognizes that the per-barrel costs of producing small volumes of oil may be greater than those for normal production volumes, and that producers might shut in or abandon low-production wells without some form of tax incentive. *See* S. Rep. No. 394, *supra* p. 12, at 37-42.

The balancing process in which Congress was engaged is most evident from the cumulative effects of the statutory categories. For example, the costs of producing oil from "stripper well properties" were determined to merit only tier 2 treatment, subject to a tax rate of 60 percent. However, the additional need Congress perceived for incentives to encourage activity by independent producers resulted in a 30 percent rate for independent producer oil from stripper wells.[20] Indeed, Congress subsequently determined that those combined considerations warrant the complete exemption of all stripper well oil produced by independents.[21]

Similarly, Congress sought to encourage the production of additional oil by means of enhanced or "tertiary" recovery techniques. *E.g.*, 125 Cong. Rec. S18,841 (daily

[20] Congress provided special incentives for independent producers based on its conclusions regarding the economics of independent operations and their importance to the development of new oil reserves. Congress found that the absence of vertical integration or other diversification on the part of independents magnified the already substantial risks of exploration and production. *See, e.g.*, 126 Cong. Rec. S2629 (daily ed. Mar. 19, 1980) (remarks of Sen. Gravel); *see also* 125 Cong. Rec. S16,845-46 (daily ed. Nov. 16, 1979) (remarks of Sen. Dole). Furthermore, Congress determined that "independent producers generally have undertaken a disproportionately large share of domestic exploratory drilling," S. Rep. No. 394, *supra* p. 12, at 27, and should be encouraged to continue those efforts. *See also* 125 Cong. Rec. S17,268-85 (daily ed. Nov. 27, 1979).

[21] Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 603, 95 Stat. 172, 338 (codified at I.R.C. §§ 4991(b)(6), 4994(g)).

ed. Dec. 17, 1979) (remarks of Sen. Randolph).[22] As an incentive for increased production from tertiary recovery projects, it gave tier 3 treatment to certain "incremental" volumes of oil produced by them. *See* Congressional Budget Office, *The Windfall Profits Tax: A Comparative Analysis of Two Bills* 34 (Nov. 1979).[23] However, Congress also recognized that tertiary recovery projects are "capital-intensive and high-risk" in nature, and concluded that additional incentives were needed to encourage their implementation. *See* 125 Cong. Rec. S18,841 (daily ed. Dec. 17, 1979) (remarks of Sen. Heflin). It consequently provided even more favorable tax treatment for a portion of the oil produced by tertiary recovery projects. I.R.C. §§ 4991(b)(4), 4994(c) ("front-end tertiary oil"). Based on its determination that incentives were particularly necessary for independent producers, Congress provided an exemption for "front-end oil" from tertiary projects controlled by independents; however, it provided a more limited incentive, in the form of a tax refund, for projects controlled by integrated producers. *Id.*

The "Alaskan oil" exemption reflects a similar balancing process. The treatment provided by the exemption follows logically from the principles and policies on which the entire Windfall Profit Tax is structured. Thus, when "viewed in context, the focus of the enactment can be fairly and rationally understood" as one that is entirely consistent with the mandates of the Uniformity Clause. *See Nixon v. Administrator of General Services*, 433 U.S. at 472.

---

[22] Tertiary oil recovery involves additional production from reservoirs that already have produced more easily extracted volumes of the oil they contain. It requires the application of sophisticated and expensive methods, such as "technologies that use heat or chemical compounds." 125 Cong. Rec. S16,864 (daily ed. Nov. 16, 1979).

[23] "Incremental tertiary oil" is oil produced in excess of the volumes anticipated on the basis of a project's historical production reduced by a statutory decline rate. I.R.C. §§ 4991(e), 4993.

Congress did not make an arbitrary leap from full taxation to exemption for "Alaskan oil." Even without the exemption, the oil to which it applies would receive highly favorable tier 3 treatment as "newly discovered oil." [24] When Congress took into account the combination of factors that distinguishes new production in certain areas of Alaska from new domestic production generally, it merely determined not to impose what already was the lowest level of tax burden provided for under the statute. On the basis of those distinguishing factors, Congress placed "Alaskan oil" in a separate category that in effect might be viewed as "tier 4."

In creating this separate category, Congress recognized that oil produced in the remote areas of arctic and sub-arctic Alaska could not yield the same sort of gains that decontrol would make possible for oil produced elsewhere in the United States. The relatively high cost of transporting oil from remote Alaskan regions by means of the Trans Alaska Pipeline System and ocean-going tankers substantially reduces the price that can be obtained for such oil at the wellhead. *E.g.*, H.R. Rep. No. 304, *supra* p. 12, at 30.[25] Thus, throughout most of the period of

[24] Oil is treated as "newly discovered" for purposes of the Windfall Profit Tax if it comes from a reservoir that went into commercial production after December 31, 1978. *See* I.R.C. § 4991(e)(2); 10 C.F.R. § 212.79(b) (1980); 44 Fed. Reg. 25,828, 25,832 (1979). Atlantic Richfield began the first commercial production covered by the exemption in December 1981. Thus, all "exempt Alaskan oil" also would qualify as "newly discovered oil."

[25] At the time Congress enacted the Windfall Profit Tax, the cost of transporting oil over the Trans Alaska Pipeline System was the primary source of the wellhead price differential for North Slope oil. In 1978, when the difference between the wellhead price available on the Alaskan North Slope and the uncontrolled price in the lower-48 states was \$8-\$9 per barrel, the weighted average TAPS tariff was \$6.26 per barrel. H.R. Rep. No. 304, *supra* p. 12, at 30. By contrast, the average cost of transporting oil over pipelines other than TAPS for that year was only 42 cents. *See Williams Pipe Line Co.*, Federal Energy Regulatory Comm'n Opinion No.

federal price controls, North Slope oil could not even obtain the wellhead price allowed by regulation.[26] Moreover, as Congress clearly understood, the price commanded at the wellhead by oil produced on the North Slope or in other remote areas of Alaska was expected to remain substantially below the decontrolled price available to producers in the lower-48 states. *See id.*; *see also* 125 Cong. Rec. S17,479 (daily ed. Nov. 29, 1979) (remarks of Sen. Stevens); *Design of a Windfall Profit Tax*, *supra* note 26, at 20-21.

The effects of transportation costs on the wellhead price for "Alaskan oil" meant that producers would have less of an incentive to develop new oil reserves in the affected areas. While discoveries elsewhere could be expected to yield wellhead prices close to the prevailing world oil price, oil discovered in the Alaskan regions dependent on TAPS and marine transportation offered wellhead prices at least $8 lower.[27]

---

154, at 189 (Nov. 30, 1982), *petition for review filed sub nom. Farmers Union Cent. Exch. v. FERC*, No. 82-2412 (D.C. Cir. Nov. 30, 1982). Recently, marine transportation charges from Alaska have risen to approximately the same levels as the TAPS tariff charges.

[26] As the House Ways and Means Committee pointed out, "[i]n 1978, when the price of uncontrolled stripper well oil was $14 per barrel and Alaska's upper tier ceiling price was about $12 per barrel, Alaskan [North Slope] oil sold for $5.22 per barrel at the wellhead." H.R. Rep. No. 304, *supra* p. 12, at 30; *see also* Staff of the Joint Comm. on Taxation, 96th Cong., 1st Sess., *The Design of a Windfall Profit Tax* 20-21 (Comm. Print 1979) [hereinafter cited as *Design of a Windfall Profit Tax*]; 125 Cong. Rec. S17,479 (daily ed. Nov. 29, 1979) (remarks of Sen. Stevens). North Slope wellhead prices did reach the ceiling level in the second half of 1979. However, because of high transportation costs, the wellhead price for North Slope oil was in general expected to be far below wellhead prices in the lower-48 states after decontrol.

[27] That disincentive would not have been eliminated or even substantially reduced by the fact that the wellhead price is used to compute the taxable "windfall profit." *See* Motion of Taxpayer and

Congress was unwilling to accept this disincentive for new Alaskan production. To the contrary, it recognized that such production would involve unusual risks and costs and consequently would require special incentives. As the legislative debate emphasized,

> Development and production of [Alaskan] reserves . . . is by all accounts expensive and difficult. Short construction seasons and the effects of severe arctic winters take their toll on men and equipment. Special steps must be taken to preserve a fragile arctic environment. The costs of transportation and labor are high.

125 Cong. Rec. S17,422 (daily ed. Nov. 28, 1979) (remarks of Sen. Stevens); *see also* 125 Cong. Rec. S16,327 (daily ed. Nov. 8, 1979) (remarks of Sen. Gravel). Each of these considerations makes the risks and costs of Alaskan production far greater than those encountered generally in the lower-48 states.[28] Moreover, each of them poses more acute problems in the remote arctic and sub-

---

Association Appellees to Affirm at 11 n.17. This is so because a dollar reduction in the wellhead price will reduce the windfall profit tax by only a fraction of a dollar. For example, using appellees' assumptions that the "mainland wellhead price" is $28 and transportation costs for "exempt Alaskan oil" are $8, the wellhead price for the exempt oil would be $20 per barrel. *Id.* Assume further that all "newly discovered oil," wherever located, is treated as "tier 3 oil," subject to a 30 percent tax rate, and that the "adjusted base price" for newly discovered tier 3 oil is $18. The respective windfall profit taxes would be $0.60 per barrel for "Alaskan oil" [(20 − 18) x .3] and $3.00 per barrel for other newly discovered oil [(28 − 18) x .3]. A producer thus could expect to obtain only $19.40 at the wellhead, net of windfall profit tax, for each barrel of "Alaskan oil" it discovered, but could expect a corresponding price of $25.00 for each barrel of oil discovered elsewhere.

[28] *See* 126 Cong. Rec. S2630 (daily ed. Mar. 19, 1980) (remarks of Sen. Gravel) ("The cost of drilling a well in Alaska is 15 times greater than the cost of drilling a well in the rest of the United States."); *see also* 126 Cong. Rec. S2620 (daily ed. Mar. 19, 1980) (remarks of Sen. Boren).

arctic regions of Alaska than elsewhere in the state. *See* 126 Cong. Rec. S2630 (daily ed. Mar. 19, 1980) (remarks of Sen. Gravel).

Climatic conditions alone create distinctive burdens. For example, the number of days during which exploration and construction activities can be conducted is sharply limited by severe winter weather conditions as well as by the brevity or absence of daylight during winter months. In addition, specialized equipment and techniques are required to deal with such problems as drilling and constructing facilities for production and transportation in permafrost regions.[29]

These problems are compounded by the absence of support facilities. In order to explore for and develop oil reserves in the remote regions of Alaska, producers must establish their own means of bringing labor and materials to work sites. For example, major items necessary for exploration and production on the North Slope must be prefabricated in the lower-48 states and barged to Alaska at enormous risks and costs during the extremely brief period in which harbors are ice-free.[30] Again, this lack of support facilities or "infrastructure" is without parallel in the lower-48 states.

Climate and logistical difficulties thus make activities in the areas covered by the exemption far more costly—

---

[29] A substantial portion of the land area of the State of Alaska is underlain by permafrost. The areas that are completely free of permafrost are virtually all located south of the divide of the Alaska-Aleutian Range. *See* 2 U.S. Dep't of the Interior, *Final Environmental Impact Statement: Proposed Trans-Alaska Pipeline* 8 (1972).

[30] Furthermore, the areas covered by the exemption contain virtually no ground transportation facilities. The only route substantially beyond Fairbanks is the haul road alongside the Trans Alaska Pipeline. Equipment, personnel and supplies consequently must be transported to inland work sites by air or over new roads that must be constructed in hostile terrain.

in terms of initial and ongoing capital investment as well as operating expense—than exploration and production elsewhere in the United States. Congress recognized not only that this cost differential was substantial for existing projects such as Sadlerochit oil production,[31] but also that it was likely to be even greater for oil covered by the exemption. *See, e.g., Design of a Windfall Profit Tax, supra note* 26, at 22.

Congress also was aware that the region covered by the "Alaskan oil" exemption was a particularly important one in which to encourage exploration and production. The largest oil field in the United States was discovered at Prudhoe Bay, and many of the most promising prospects for the discovery of major new oil reserves are located in the same region.[32] Congress thus sought to spur the discovery and development of reserves that would be of sufficient magnitude to decrease the Nation's dependence on foreign sources over the long term.

---

[31] *See, e.g.,* 126 Cong. Rec. S2630 (daily ed. Mar. 19, 1980) (remarks of Sen. Gravel):

> The cost per hour of a production worker on the North Slope of Alaska is more than four times that of a comparable worker elsewhere in the United States. . . . Salaries on the North Slope must be much higher because of its remoteness, hard weather, and isolation. Employees have a built-in overtime component because of the hours worked while on the Slope. . . . Finally, [under established work schedules] an employee must be transported from Anchorage 800 miles to the work site and back 25 times per year at employer expense.

[32] More than 20 percent of the mean undiscovered recoverable crude oil reserves in the United States, amounting to an estimated volume of over 17 billion barrels, have been attributed to areas covered by the "Alaskan oil" exemption. *See* U.S. Dep't of the Interior, *Geological Survey Circular 860, Estimates of Undiscovered Recoverable Conventional Resources of Oil and Gas in the United States* 22, 74-79 (1981). As of the time Congress considered the Windfall Profit Tax, exploration for possible oil and gas reserves had not taken place in 13 of the 15 sedimentary basins in Alaska. 125 Cong. Rec. S17,478 (daily ed. Nov. 29, 1979) (remarks of Sen. Stevens).

In sum, considerations of geology, environment and economics, not geography, led Congress to conclude that "taxation of this production would discourage exploration and development of reservoirs" in the areas covered by the exemption, H.R. Conf. Rep. No. 817, 96th Cong., 2d Sess. 103 (1980), *reprinted in* 1980 U.S. Code Cong. & Ad. News 642, and that particularly attractive incentives would be necessary to encourage such exploration and development. The combined effects of transportation costs, production costs and the prospects for major new oil supplies persuaded Congress that the appropriate incentive for the production of "Alaskan oil" was exemption from the Windfall Profit Tax.

The limited scope of the exemption confirms that Congress acted on the basis of standards underlying the entire Windfall Profit Tax, rather than out of favoritism for one state. The exemption applies only to Alaskan oil that must be transported lengthy distances via TAPS, ocean-going tankers or other facilities yet to be constructed. Oil located near existing support and transportation facilities south of the Alaska and Aleutian Ranges is not exempted. Nor does the exemption cover oil located south of the Arctic Circle—outside of the most hostile environment—and within 75 miles of TAPS. Finally, the exemption specifically excludes oil produced from the Sadlerochit reservoir at Prudhoe Bay, which currently has a production rate fifteen times that of the Kuparuk River field and is expected to produce more than 9 billion barrels of crude oil over the life of the field. That exclusion was based on Congress' determination that the unit costs of production for Sadlerochit oil are not as high as those that may be anticipated for future production in the same area, and that, in any event, no special production incentives were necessary with respect to oil that already was flowing prior to enactment of the Windfall Profit Tax. *See Design of a Windfall Profit Tax, supra* note 26, at 22.

These limitations are substantial ones. The exclusion of Sadlerochit oil alone meant that no exemption was given for the largest known reservoir in the United States and the only field in the exempt region from which oil was produced in commercial quantities before December 1981. By placing the southern boundary of the exempt region at the divide of the Alaska-Aleutian Range, moreover, Congress excluded the only other major producing area in Alaska, the Cook Inlet.[33] Congress did not single out the entire State of Alaska for special tax treatment in violation of the Uniformity Clause. *See supra* note 1. Instead, it drew a narrow tax classification in response to the special circumstances affecting certain oil, only part of which is located in that state.[34]

The limited scope of the "Alaskan oil" exemption and its clear consistency with the policies underlying the Windfall Profit Tax as a whole thus demonstrate that the exemption embodies a permissible legislative distinction among subjects of taxation. *See Head Money Cases*, 112 U.S. at 594-95. The exemption is no less valid because Congress chose to state it in geographic terms. The combination of factors that led Congress to provide special treatment for "exempt Alaskan oil" is unique to the areas the exemption covers.[35] As this Court has recognized, the

[33] The Cook Inlet is located immediately southwest of Anchorage and opens into the Gulf of Alaska. Oil is produced both on the west shore of the inlet and from offshore platforms.

[34] As appellant has noted, the "Alaskan oil" exemption extends to oil that is within the exclusive jurisdiction and control of the United States by reason of being located on the Outer Continental Shelf more than three miles beyond the State's coastline. *See* Jurisdictional Statement at 17 n.24. Several of the tracts Atlantic Richfield holds in the areas covered by the exemption are located on the Outer Continental Shelf, in the Beaufort Sea.

[35] There is no evidence that Congress was or should have been aware of any other oil whose production would involve the same set of considerations. At most, appellees have contended that a valid tax classification covering "exempt Alaskan oil," but not expressed

Constitution does not forbid Congress from dealing with such geographically limited problems in expressly geographic language. *See Regional Rail Reorganization Act Cases*, 419 U.S. at 158-59. The "Alaskan oil" exemption meets the substantive demands of the Uniformity Clause, and should not be held invalid merely because it employs "words readily intelligible . . . rather than circumlocutions that would have had exactly the same effect." *In re Penn Central Transportation Co.*, 384 F. Supp. at 916.

## CONCLUSION

The judgment of the United States District Court for the District of Wyoming should be reversed.

Respectfully submitted,

MATTHEW J. ZINN
(Counsel of Record)
ROBERT E. JORDAN III
TIMOTHY M. WALSH
STEPTOE & JOHNSON
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 862-2028
*Attorneys for Amicus Curiae*
*Atlantic Richfield Company*

March 1983

---

in geographic terms, might also exempt oil produced in other states. *See, e.g.*, Motion of Taxpayer and Association Appellees to Affirm at 10 (a " 'cold weather' exemption would . . . be likely to benefit areas of states other than Alaska") ; Motion of the State of Louisiana to Affirm at 13 n.7. Those arguments, however, depend on isolating individual factors, such as climate, that were only part of the combination of factors on which Congress relied.